IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11793 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH KALIDAS SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11793 of 2002
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the detention order dated 18th October, 2002. By the said order, the petitioner is detained as a Dangerous Person under Prevention of Anti Social Activities Act, 1985. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of about 2 criminal cases under various provisions of IPC. The petitioner detenu has challenged the said order on various grounds.

3. On behalf of the petitioner, it is argued that at the time when the detention order was passed, the petitioner was already in judicial custody. The detaining authority has also stated the said fact in the detention order. In the detention order, there is reference about the fact that the petitioner is already in judicial custody but he is likely to be released on bail and thereafter he may continue the said activities again. The detaining authority has not stated as to on what basis it has reached the said conclusion that the petitioner may be released on bail and thereafter he may continue the said activities again.

4. Atleast the detaining authority was required to state the reasons as to on what basis it has reached the conclusion that the petitioner may be released on bail especially when the detaining authority has not stated as to on what material said satisfaction is reached by it.

5. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

Jayanti*